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Letter dated 26 September 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 22 July 2002 (S/2002/811).

The Counter-Terrorism Committee has received the attached supplementary report from Peru submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its attachment to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: Spanish]

Note verbale dated 24 September 2002 from the Permanent Mission of Peru to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of Peru to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) and, as an addition to the information submitted in January 2002, has the honour to attach supplementary information on the counter-terrorism measures adopted by Peru, as requested in the Committee's communication dated 24 June 2002.

Enclosure

[Original: Spanish]

Letter supplementing the report of the Government of Peru on compliance with Security Council Resolution 1373 (2001)*

With respect to the additional information requested by the Counter-Terrorism Committee of the United Nations Security Council regarding the report submitted by Peru pursuant to resolution 1373 (2001), the Government of Peru provides the following clarifications:

Subparagraph 1 (a):

The CTC would welcome a detailed outline of Act No. 25475 and of the particular provisions of the Penal Code relevant to compliance with the requirements of paragraph 1 of the resolution. It would especially welcome an explanation of what constitute "terrorist acts" and "terrorist groups" for the purposes of those laws.

Decree-Law No. 25475 establishes criminal definitions for acts considered terrorist offences in Peru and sets out the procedures for pre-trial investigation, pre-trial proceedings and trial. It should be noted that, although the legislative method employed in this Decree-Law has been questioned on the grounds that the criminal definitions are very broad and generic, in practice, judges have been developing case law to restrict its scope. However, since the legislation has been evaluated by the Inter-American Court of Human Rights, a review of its provisions is in order.

In this regard, it should be mentioned that the Congress of the Republic is currently debating bill No. 3405/2001-CR, entitled "Consolidated text of counter-terrorism legislation, regulations governing the crime of terrorism and other statutory provisions".

Decree-Law No. 25475 is preventive and punitive and its basic definition of terrorism (contained in article 2) does not require that the legal right that is being protected, namely, public peace, be violated, but merely the existence of a situation in which there is simply a probability that harm or injury may occur. We can therefore say that the crime of terrorism is a crime of *abstract danger* and the finding of illicit activity is one of risk rather than result.

Article 3 contemplates illicit association for the purpose of committing such terrorist offences and considers membership in a terrorist organization an aggravating circumstance. This article subsumes the criminal definitions established in article 317 of the current Penal Code. In addition to membership in a terrorist organization, other aggravating circumstances are the concurrent commission of crimes intended to obtain financing, such as extortion, robbery and kidnapping, or the illegal appropriation of money, goods or services from an authority or from private individuals, which are dealt with as independent crimes in articles 200, 188, 189, 152, subparagraph 8, 186 and 190 of the Penal Code.

What is a terrorist act? According to Decree-Law No. 25475, a terrorist act is an action carried out by one or more persons for the purpose of provoking, creating

* The enclosures are on file with the Secretariat and are available for consultation.

or maintaining a state of anxiety, alarm or fear in the population or a sector thereof, with a view to changing the power structure by installing a form of totalitarian government. Such acts are considered to be multiple offences because, through a single action, they injure or harm several legal rights protected and regulated by the Constitution and by the criminal laws in force. Article 2 of Decree-Law No. 25475 defines the concept of terrorist act.

What is a terrorist group? It is a group of people who associate for a specific purpose, guided by a philosophy or ideology, and which is duly organized and structured under the direction of a leader, chief or head and in which each member is assigned previously delegated and defined functions, for the purpose of carrying out terrorist acts.

Article 3 of Decree-Law No. 25475 defines the concept of terrorist group, the formation of which is considered an aggravated criminal offence.

In view of the recent ratification by Peru of the International Convention for the Suppression of the Financing of Terrorism, the CTC would be grateful for a progress report on any proposed amendments to legislation for its implementation, especially as regards articles 2 and 4.

Although no legislative amendments have been adopted to date covering all the points envisaged in the International Convention for the Suppression of the Financing of Terrorism, Act. No. 27765 against Money Laundering was published on 27 June 2002. The Act defines money-laundering as follows:

> "Article 1. Acts of conversion and transfer. Anyone who converts or transfers money, goods, property or profits which he knows or can assume to be of illicit origin, for the purpose of preventing the identification of their origin, or their seizure or confiscation, shall be punishable by no less than eight and no more than 15 years' imprisonment and a fine equivalent to 120 to 350 days' minimum wage."

The second paragraph of article 3 further stipulates that:

> "When the acts of conversion and transfer are related to money, goods, property or profits deriving from illicit drug trafficking, terrorism or narcoterrorism, the term of imprisonment shall be no less than 25 years."

This provision repeals articles 296-A and 296-B of the Penal Code.

An intersectoral commission is meeting to evaluate the above-mentioned consolidated text of counter-terrorism legislation. This commission will present a report suggesting to the Peruvian Congress that the forthcoming consolidated text should include terrorist financing as a separate criminal offence.

Subparagraph 1 (b):

Article 4 of Act No. 25475 does not appear to refer directly to the financing of terrorism. However, it is drafted in terms that appear to be wide enough to criminalize activity of that kind. Is that the view of that provision that has been taken by the courts? Have there been successful prosecutions of the financing of terrorist activities under that article?

Article 4 of Decree-Law No. 25475 is quite broad and refers to the various forms of voluntary collaboration with terrorism by persons not belonging to a

terrorist group, whether by securing, gathering, collecting or supplying any goods or means or engaging in any other act of collaboration to further the commission of such offences or the achievement of the goals of a terrorist group, including financial collaboration or voluntary assistance for the purpose of financing the activities of terrorist elements or groups. In the course of the counter-terrorism campaign in Peru, various types of financial assistance have been observed, offered by what could be called sympathizers who, while not "belonging" to the group or directly participating in activities, have provided support in the form of money, goods or services of all kinds, thereby facilitating the perpetration of terrorist acts.

Subparagraph (f) of article 4 of Act No. 25475 contains a generic definition of the crime of providing financial support for terrorist activities. The definition is sufficiently broad to criminalize actions that effectively assist terrorist activities.

Current legislation does not prohibit financing as such, it punishes acts of collaboration (if a person provides financing repeatedly, he or she is considered to belong to the terrorist group). This situation is expected to change in the draft consolidated text of counter-terrorism legislation.

The report indicates that article 296-B of the Penal Code, as amended in 1999, criminalizes the laundering of the proceeds of narcoterrorism. What constitutes narcoterrorism for the purposes of that article? Is there any provision in place, or planned, to deal with the proceeds of other crimes or with funds and other assets, whether from illicit sources or not, that are known or are reasonably suspected of being intended for terrorist purposes?

For climatic reasons, coca leaves are grown on the edge of the jungle or the high jungle in Peru; the main centres for processing drugs and shipping them to Colombia and the United States are also located there.

Since access to this type of terrain is difficult, terrorism also took root in the same area. Geographical proximity and a common interest in continuing to operate outside the law soon prompted extreme-left-wing terrorists to overcome their aversion to the "bourgeois" vice of illicit drug trafficking, seeing it as a source of otherwise unobtainable financing.

Illicit drug traffickers also needed a severe disruption of public order in the area in question to make it difficult for the State to go after them, so the expansion of terrorism suited their purposes as well. That is the specific meaning of "narcoterrorism" in Peru.

Narcoterrorism is the strategic alliance between drug trafficking and terrorism, in which drugs finance armed actions and terrorism provides security for the production, movement, distribution and transport of drugs. The Peruvian Government has recently adopted measures to supplement the relevant legislation. It has acted to criminalize the financing of terrorism, through the promulgation of Act No. 27765 on Money Laundering, and through the establishment of the Financial Intelligence Unit by Act No. 27693, as a punitive technical support mechanism to achieve that objective.

In addition, article 297 of the Penal Code stipulates that "The punishment shall be life imprisonment when ... (2) the perpetrator uses narcotrafficking to finance the activities of terrorist groups".

Article 296-B of the Penal Code was repealed by the Act on Money Laundering (Act No. 27765 of 27 June 2002), which prohibits the acts of conversion, transfer, concealment, possession and failure to report suspicious operations or transactions, with the status of the perpetrator as an aggravating circumstance, and establishes rules for the investigation of this crime.

Act No. 27765 has broadened the scope of money-laundering legislation by punishing the laundering of money deriving from any form of crime and by establishing "narcoterrorism" as an aggravating circumstance.

Subparagraph 1 (c):

Is there any intention to extend the power under article 1 of Act No. 27379 to freeze assets during preliminary judicial investigations to also cover the freezing of assets during police investigations? Is that a matter that is being addressed by the proposed law mentioned immediately below?

There is no draft law that would allow the freezing, during the police investigation stage, of funds and other financial assets deposited in financial institutions.

As indicated in the first report submitted by the Peruvian Government, current legislation requires a court order to freeze or seize funds deposited in financial institutions, since such a measure would constitute a restriction on the right to property, which is in turn a fundamental right guaranteed by the Constitution and by international human rights instruments. Even Act No. 27379 providing for special restrictions on rights during preliminary judicial investigations, a law which was enacted to fight corruption, including the crimes of terrorism and illicit drug trafficking, and which restricts certain rights in order to permit a pre-trial investigation, specifies that such limitations on rights, including the freezing of funds, require the order of a judge.

Act No. 27693 establishing the Financial Intelligence Unit was a significant advance and is linked to articles 375 to 381 of Act No. 26702, the General Act on the Financial System and the Insurance System and on the Organization of the Superintendency of Banking and Insurance.

In Peru, preliminary investigations are conducted by the Public Prosecutor's Office, which works in coordination with the National Police. The office, which has responsibility for freezing assets prior to a trial, must obtain the order of a judge before imposing measures that require the restriction of people's rights.

The CTC would appreciate a report on the progress made in the enactment and bringing into effect of the proposed law "to regulate the manner of implementation of preventive measures taken pursuant to decisions or resolutions adopted on [the subject of subparagraph 1 (c)] by international bodies or entities such as the United Nations". The CTC would also welcome a detailed outline of the proposed law, including, in particular, an indication of the provision made by it in relation to:

- **the vigilance and reporting obligations that will apply to financial institutions and other persons and entities (including those outside the main financial sector, such as lawyers), with a view, in particular, to the**

prevention of economic and financial transactions with terrorist or other criminal aims (as distinct from identifying the proceeds of illicit activity);

- **measures to ensure that funds and other economic resources collected for religious, charitable or cultural purposes are not diverted for other purposes, particularly for financing terrorism; and**
- **the regulation of alternative remittance systems, including systems of, or similar to, the kind known as Hawala.**

The proposed law is being further reviewed. Intersectoral meetings are being held for that purpose and, once the work is complete, it will be presented as a proposal for inclusion in the consolidated text of counter-terrorism legislation.

Requests sent by the United Nations Security Council for the freezing of funds and other financial assets have nevertheless been transmitted to the country's financial institutions within the framework of resolutions 1333 (2001) and 1373 (2001), with a view to verifying whether the persons and organizations included on the lists in those resolutions hold funds in the financial system. Such institutions have also been requested to inform the relevant authorities of any suspicious transaction carried out with the funds in question, in accordance with article 378 of Act No. 26702, which is described in detail below.

With respect to the specific information requested the proposed law covers none of the aspects mentioned by the Committee.

Are any of the particular matters mentioned immediately above dealt with by existing laws? If so, please provide an outline of the relevant provisions.

We wish to inform the Committee that article 378 of Act No. 26702, the General Act on the Financial System and the Insurance System and on the Organization of the Superintendency of Banking and Insurance requires financial institutions to report any suspicious transactions that come to their attention and that may be linked to an illicit activity. The article reads as follows:

> "(1) Financial institutions must pay special attention to all complex, unusual or large transactions, whether completed or not, all non-routine transaction patterns and all small, regular transactions that have no obvious economic or legal justification.
>
> (2) If they suspect that the transactions described in (1) might constitute or be linked to illicit activities, financial institutions must so inform the Financial Intelligence Unit directly."

In addition, Act No. 27693, published on 12 April 2002, established the Financial Intelligence Unit, a public institution specialized in receiving information on suspicious transactions made through, inter alia, financial institutions, insurance firms, casinos, mutual fund administrators, brokerage firms, bonded warehouses, customs agents and stock exchanges, with a view to evaluating such information and informing the competent judicial authorities of any operations which suggest the existence of money or asset laundering.

The second paragraph of article 3, of Act No. 27765, mentioned above, adds the following clarification:

"The penalty shall be no less than 25 years' imprisonment when the acts of conversion or transfer are linked to money, goods, property or profits deriving from illicit drug trafficking, terrorism or narcoterrorism".

Subparagraph 1 (d):

The report points out that article 4 of Act No. 25475 "applies only to acts committed in Peruvian territory". Is there any proposal to extend its application to acts committed outside Peruvian territory by Peruvian citizens, persons habitually resident in Peru or other persons who subsequently enter Peru?

Articles 1, 2, 3, 4 and 5 of the Penal Code define the scope of Peruvian law in the following terms:

"Article 1. Peruvian criminal legislation shall apply to anyone who commits a punishable offence within the territory of the Republic, subject to the exceptions laid down in international law.

It shall also apply to punishable offences committed in:

(1) Peruvian public vessels or aircraft, wherever they may be, and

(2) Peruvian private vessels or aircraft on the high seas or in airspace over which no State exercises sovereignty.

Article 2. Peruvian criminal legislation shall apply to any offence committed abroad, if:

(1) The perpetrator is a public official or servant acting in the course of his duties;

(2) The offence constitutes a threat to public peace or security, provided that its effects are felt within the territory of the Republic;

(3) It constitutes an offence against the State and national defence, the State authorities and the constitutional or monetary order;

(4) The offence is perpetrated against or by a Peruvian citizen and is classified as extraditable under Peruvian law, provided that it is also punishable in the State in which it was committed and the perpetrator enters the territory of the Republic in some way; and

(5) Peru is under an obligation to punish the offence pursuant to an international treaty.

Article 3. Peruvian criminal legislation may apply when extradition is requested but the perpetrator is not handed over to the competent authority of a foreign State.

Article 4. The provisions contained in article 2 (2), (3), (4) and (5) shall not apply:

(1) If criminal proceedings have been discontinued pursuant to any legislation;

(2) In the case of political offences or related crimes; and

(3) If the accused has been acquitted in a foreign country or if the convicted offender has served his sentence or that sentence has lapsed or been suspended.

If the perpetrator has not served his sentence in full, he may be brought to trial for a second time in the Peruvian courts, but the part of the sentence served shall be taken into account.

Article 5. The place where the offence is committed shall be the place where the perpetrator or accomplice acted or failed to fulfil his obligation to act or the place in which its effects are felt."

These provisions determine the scope of the law. They establish every situation in which Peruvian legislation is applicable, and which persons and cases may be subject to criminal proceedings. In particular, article 7 of Decree-Law No. 25475 establishes that Peruvian citizens who advocate terrorist acts outside the territory of the Republic shall be punishable not only by imprisonment but also by the loss of Peruvian citizenship.

It should be pointed out that the draft consolidated text of counter-terrorism legislation, which has been submitted to Congress for adoption, criminalizes acts of international terrorism, whether they are committed in Peru, using Peruvian territory, or by Peruvian citizens, irrespective of where their effects are felt.

Subparagraph 2 (a):

Please confirm whether Act No. 25475 is effective to prohibit:

The carrying out, within or from Peru, of recruiting, collecting of funds and soliciting of other forms of support from other countries.

Article 4 (f) of Decree-Law No. 25475 defines acts of collaboration with and support for terrorism, inter alia, as any kind of economic action, assistance or intervention undertaken voluntarily for the purpose of financing the activities of terrorist elements or groups, which may include engaging in activities to raise funds and/or solicit support from other countries for acts of terrorism.

For the offence to be punishable, a causal link must simply be demonstrated between the acts of economic cooperation and the terrorist acts or groups. Consequently, the problem is less one of legal precision in the definition under criminal law, than of obtaining the necessary proof.

We will propose that more precise provisions on this matter be included in the draft consolidated text referred to above.

Deceptive activities such as recruitment based on a representation to the recruit that the purpose of the recruitment is one (e.g. teaching) different from the true purpose and collection of funds through front organizations.

The type of offence punishable under Peruvian legislation is "the organization of courses", which constitutes an act of collaboration (this offence reflects the ideological character once associated with Peruvian terrorism); nevertheless, the offence of recruitment is provided for in the section on "international terrorism" in the draft consolidated text currently under discussion.

The report mentions that article 279 of the Penal Code penalizes, inter alia, the illegal possession of arms. What is the legislation concerning the acquisition and possession, and import and export, of weapons? In particular, in what situations is the possession of arms legal?

Article 279 of the Penal Code uses general terms such as "storage", "supplying" or "possession", referring to the acquisition, possession and trafficking of arms, explosives and other materials listed in the article. In the description of the offence, the word "illegal" means any circumstances that may be inconsistent with the provisions of the administrative regulations governing the possession and sale of these products. Although the act must also constitute a threat to the legally protected right (public security), there is no requirement to prove that to be the result, since the offence is considered to be an abstract danger.

Article 279 "A" of the Penal Code, incorporated by Act No. 26672 of 20 October 1996, contains specific provisions on the illicit trafficking of chemical weapons in contravention of the United Nations Chemical Weapons Convention of 1992.

Article 279 "B" of the Penal Code, incorporated by Legislative Decree No. 898 of 27 May 1998, defines and punishes the offence of theft or seizure of arms or ammunition intended for official use. In its most aggravated form, it is punishable with life imprisonment.

Article 317 of the Penal Code concerns cases of illicit association with intent to commit an offence, providing for a term of eight to 25 years' imprisonment for acts perpetrated by groups of two or more persons with the intention of committing offences such as those against public security mentioned above.

The possession or bearing of arms, except by members of the armed forces and police, is legally permitted only upon acquisition of the corresponding licence from the Directorate for Control of Security Services and Civilian Use of Arms, Ammunition and Explosives (DISCAMEC) of the Ministry of the Interior, in accordance with the regulations governing the manufacture, sale, possession and use by private individuals of arms and ammunition not intended for military use (Act No. 25054 and its subsequent amendments), granted following an evaluation and fulfilment of the requirements in each case. For example, in the case of weapons for purposes of self-defence, licences are granted to individuals who need to protect themselves from threats and offences against their person or property, to authorities and public figures who, by virtue of their activities, whether public or private, or functions, DISCAMEC considers may be exposed to criminal activity more frequently than others and to persons providing security for such authorities or public figures. Licences for the use of weapons for private security purposes are granted to companies engaging in those activities. In the case of sporting weapons, licences are granted to members of clubs and associations belonging to marksmanship federations. Licences for hunting weapons are granted to persons who engage in this activity for sport, recreation or survival, subject to Ministry of Agriculture regulations. Licences for signalling weapons are granted to persons exposed to the risk of being lost at sea or on land, to enable them to signal for help. Licences for weapons collections are granted to museums or other places where collections are maintained, provided that they fulfil the requirements established for each case.

The State of Peru, with a view to combating the indiscriminate use of firearms by criminals, has adopted preventive legislation requiring owners of firearms (for military or civilian use) either to surrender their weapons or to obtain licences for them within a mandatory deadline. Illegal owners even benefit from an amnesty (non-prosecution) if they surrender their weapons to the State. However, once the deadline has passed, article 279 of the Penal Code becomes applicable (Act No. 26978 of 22 September 1998 and Act No. 27521 of 28 September 2001).

Subparagraph 2 (b):

Please describe the legislative amendments that were identified as necessary to expand the anti-terrorism responsibilities of the various agencies mentioned in the report to include possible acts of international terrorism. Have those amendments been made and brought into force?

No amendments have as yet been made to anti-terrorism legislation and no laws have been adopted defining possible acts of international terrorism.

However, the draft consolidated text of counter-terrorism legislation which contains provisions expressly defining the offence of international terrorism (supplementary article 14, in which Peru pledges to cooperate with other countries in eradicating international terrorism), should be adopted shortly.

Part of the problem of typifying the offence of international terrorism is that there is no international definition of terrorism, meaning that there is no common definition that might be acceptable to the international community when punishing citizens of countries other than Peru.

Subparagraph 2 (c):

What provisions exist to exclude from access to Peru persons of the kind mentioned in subparagraph 2 (c) of the resolution who seek to enter otherwise than as refugees?

On the basis of the United Nations Convention relating to the Status of Refugees (1951) and the Optional Protocol thereto (1967), Peru has a qualifying period for those seeking asylum or refugee status, during which an assessment is made of the applicant's background. Thus, for example, article 21 of Supreme Decree No. 001-85-RE (Regulations governing the legal status of political refugees and persons granted political asylum in Peru) establishes the following: "... when there are serious reasons for considering that aliens, in their country of origin, last country of residence or any other country, have committed a serious non-political crime requiring international prosecution, in particular crimes of terrorism and drug trafficking, such persons shall not be considered refugees".

Pursuant to article 5 of Decree-Law No. 25475, which makes simply belonging to a terrorist group a criminal offence, and in keeping with article 2 (5) of the Penal Code establishing the obligation to punish crimes in accordance with international treaties to which Peru is a party, it is possible for the Public Prosecutor's Office to intervene and take criminal action even against a member of a foreign terrorist group who seeks refuge in Peru, provided that it takes into account the conditions set out above. Thus, as soon as the alert is given that such persons have arrived in Peru, the corresponding investigations are carried out.

Subparagraph 2 (d):

The penalty for the offence of conspiring against another State (Penal Code, article 338) is stated to be imprisonment for up to 5 years. It appears that the penalty for similar activity against Peru is imprisonment for up to 20 years. Please clarify this matter and explain the rationale for the apparent disparity (assuming it exists).

It is true that acts threatening the political order of a foreign State are treated differently from similar acts committed against the State of Peru. This is because the provisions governing each of the crimes described are intended to protect two very different legal rights. On the one hand, the provision governing the offence constituted by "acts intended to change the political organization of a foreign State" is designed to protect Peru's good relations with the other countries of the international community. On the other, the provision governing the offence described in article 346 of the Penal Code is intended to provide direct protection against an attack on the State itself. There is a significant difference between the two objectives, since preserving the State's good relations is not the same as ensuring its very survival.

Besides, for foreign States, article 338 of the Penal Code is inclusive since, rather than specifying which acts are considered illicit, it criminalizes any act intended to change the political organization of a foreign State through violence. The penalty is increased if the offence is committed for profit or any other "reprehensible reason".[1] This is consistent with article 317 of the Penal Code, which punishes illicit association with intent to commit an offence by groups that threaten the State and national defence or the State authorities and the constitutional order, in other words, acts envisaged in article 338 when they are perpetrated by groups, with a term of between eight and 25 years' imprisonment.

The criminalization of acts of international terrorism, in accordance with the intention of Security Council resolution 1373 (2001), is being considered in the draft consolidated text to be adopted shortly by the Congress.

What is the competence of the courts of Peru to deal with criminal acts of each of the following kinds:

An act committed outside Peru by a person who is a citizen of, or habitually resident in, Peru (whether that person is currently present in Peru or not)

As stated in the reply to subparagraph 1 (d), the general provisions concerning the territorial scope of criminal legislation are contained in the Penal Code. Articles 1 and 2 of the Code indicate the cases in which Peruvian law is applicable to any offence committed abroad:

(1) If the perpetrator is a public official or servant acting in the course of his duties;

(2) If the offence constitutes a threat to public peace or security, provided that its effects are felt within the territory of the Republic;

[1] A term which is, moreover, subjective.

(3) If it constitutes an offence against the State and national defence, the State authorities and the constitutional or monetary order;

(4) If the offence is perpetrated against or by a Peruvian citizen and is classified as extraditable under Peruvian law, provided that it is also punishable in the State in which it was committed and the perpetrator enters the territory of the Republic in some way; and

(5) If Peru is under an obligation to punish the offence pursuant to an international treaty.

In addition, article 6 of the Code of Criminal Procedure establishes that a Peruvian who, outside the territory of the Republic, commits an offence punishable both by Peruvian law and by the law of the country in which the offence was committed may be prosecuted on his or her return to Peru.

The offence of international terrorism will be included in Peruvian legislation once the draft consolidated text of counter-terrorism legislation is adopted.

An act committed outside Peru by a foreign national who is currently in Peru?

For such cases, we must refer to the international extradition treaties signed and ratified by Peru (see attachment 1), as well as to the principle of international reciprocity, depending on the particular case in question.

Subparagraph 2 (f):

The report mentions, by way of example, a number of international arrangements on mutual assistance in criminal matters and on extradition entered into by Peru. Please provide a complete list of the bilateral and multilateral treaties on those matters to which Peru is party.

Please see the list provided.

What is the legal time frame within which a request for judicial assistance in criminal investigations or criminal proceedings must be met and how long, on average, does it actually take in practice to implement such a request in Peru? What are Peru's requirements with regard to evidence in relation to requests for extradition?

The first supplementary provision of Supreme Decree No. 044-93-JUS containing the implementing regulations for Act No. 24710 (the Active Extradition Act), as amended by Supreme Decree No. 031-2001-JUS, stipulates that: "the Peruvian State must conduct proceedings in an extradition case ... mindful of the maximum time period within which it may submit a request for extradition to another State, as established in extradition treaties and in accordance with the principle of reciprocity, the domestic legislation of requested States, international practice and other applicable provisions".

The law provides that a request for active extradition must be studied by a commission composed of two representatives from the Ministry of Justice and two from the Ministry of Foreign Affairs, which has a maximum of five days in which to issue and submit its substantiated report to the Ministry of Justice.

The Ministry of Justice, pursuant to Supreme Decree No. 044-93-JUS as amended by Supreme Decree No. 031-2001-JUS, must then present the commission's report to the Council of Ministers, which must decide whether to grant or refuse active extradition. In compliance with the Council's decision, the Ministry must issue a corresponding supreme resolution.

Neither the Active Extradition Act nor its implementing regulations establish a time frame for the sequence of events outlined in the preceding paragraphs.

The law provides that, when granting passive extradition, consideration must be given to: (a) the existence of guarantees that the requesting State will administer justice properly; and (b) the existence of a previous request for extradition made by the requesting State to a third State that was rejected because it was deemed to have political implications.

Subparagraph 2 (g):

Please describe the mechanism for inter-agency coordination between the authorities responsible for narcotics control, financial tracking and security, in particular in regard to border control.

The Directorate of Migration and Naturalization is the high-level body that administers, coordinates and monitors the migratory movements of nationals and aliens, issues ordinary passports and safe conducts and grants naturalization papers in accordance with the law and government policy. Its function is to direct, coordinate and monitor the migratory movements of nationals and aliens through the country's authorized entry and exit points, as stipulated in the regulation governing the organization and functions of the Ministry of the Interior, adopted by ministerial resolution No. 0829-95-IN-0103050000000 of 4 July 1995.

The report mentions the existence in Peru of the practical problems of criminal networks involved in trafficking in migrants and related activities such as the production of false documents. What is planned to solve these problems?

As a way of solving the problems of trafficking in persons and falsification of travel documents that can be used for terrorist activities or purposes, the Directorate of Migration and Naturalization has taken the following action:

(a) In coordination with the executive branch, it promoted the amendment of the Penal Code to establish penalties for persons guilty of trafficking in migrants, through the incorporation of chapter IV, article 303 A, under Act No. 27202 of 15 November 1999. This article of the Code allows the Directorate to work with the National Police to monitor, detect and investigate cases of trafficking in migrants. It also advocates the appointment of a representative of the Attorney-General's Office, as permanent prosecutor for cases of trafficking in persons at Jorge Chávez International Airport.

(b) With the cooperation of foreign consulates in Peru, training and courses are being offered to all staff of the Directorate of Migration and Naturalization, at its headquarters, in Puerto Callao and in the provincial headquarters, on topics relating to fraudulent documentation.

(c) The Directorate has adopted a new Single Text of Administrative Procedures 2002 which, applying the administrative principles of Act No. 27444 on

General Administrative Procedures, has established simple, basic requirements that can easily be fulfilled by anyone appearing in person to obtain or renew a passport, and by aliens seeking migrant status or temporary or permanent residence in the country.

(d) Bilateral agreements have been concluded with Argentina and Bolivia enabling illegal aliens in one country who are nationals of the other party to legalize their migrant status or their status as temporary or permanent residents in that country.

(e) With the adoption by the Congress of the United Nations Convention against Transnational Organized Crime and its two additional protocols, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Air and Sea, the Directorate will be one of the institutions working to achieve the goals of the Convention, once the instrument has entered into force.

Given that those problems exist despite Peruvian passports being "produced with the use of internationally accepted features", what further measures are being taken or are proposed to prevent the falsification of, and tampering with, passports and other identification documents?

The security measures being taken by the Directorate of Migration and Naturalization to prevent the falsification of, and tampering with, passports and other identification documents are as follows:

- Verification of the identity of applicants by checking their data against the National Identification and Civil Status Register;
- Physical or secondary verification of presumed falsified documents by the Directorate's Coordination, Identification and Security Unit;
- Verification of identity documents using ultraviolet light;
- Computerized updating and checking of nationally issued, renewed or revoked passports;
- Passport security measures:
  - (1) Visible to the naked eye:
    - (a) Page 2 (data page) has a ghost image of the holder;
    - (b) Intaglio on the inside back cover and inside front cover and latent image;
    - (c) Blue and red security fibres on all pages;
    - (d) Holograms of the coat of arms of Peru on the security laminate;
    - (e) Passport book has double security seam stitching;
    - (f) Passport book has a security watermark.
  - (2) Visible only with special equipment:
    - (a) The words "Republic of Peru", detectable by ultraviolet light, are printed on all pages, including the inside back and front covers;

(b) The colour of the passport number on the first page changes when exposed to ultraviolet light;

(c) Page numbering is visible under ultraviolet light;

(d) Microprinting on the inside front and back covers;

(e) Microtexts on the security laminate;

(f) Sewing thread changes colour under ultraviolet light.

How does Peru secure its extensive borders against unauthorized crossings, particularly in areas where its territory might be used as a sanctuary for groups active in neighbouring countries?

Peru relies on the National Police to secure its borders against unauthorized crossings, one of that institution's main tasks, under article 166 of the Constitution, being to guard and control the borders. Article 7, paragraph 8, of Act No. 27238, the Act organizing the National Police of Peru, also establishes that its functions are to guard and control the borders and to ensure compliance with the laws controlling migration by nationals and aliens. Furthermore, article 9, paragraph 1, of the Act's implementing regulations stipulates that its functions are to guard and control the borders of the national territory and to act as an agent of integration and development.

Subparagraphs 3 (a), (b) and (c):

Is there an institutional mechanism for implementing subparagraphs 3 (a), (b) and (c) of the resolution?

Concerning subparagraph 3 (a), a start has been made on coordinating with the intersectoral commission appointed to study the issue of terrorism, with a view to amending Peru's legislation on terrorism so as to give it the greatest possible scope.

Concerning subparagraph 3 (b), it should be noted that, since few treaties exist on the matter, greater reliance is placed on international reciprocity, which varies in practice from case to case.

Concerning subparagraph 3 (c), Peru advocated at meetings of the consultative organs of the Organization of American States (OAS) the adoption by OAS of a new Inter-American Convention against Terrorism. The new text was adopted and signed by the OAS member States on 3 June 2002 at the twenty-third General Assembly of OAS held in Barbados. The Convention is in the process of being ratified in Peru.

Please see the lists provided of the conventions to which Peru is a party.

Subparagraph 3 (d):

The CTC notes that Peru has ratified all 12 of the relevant international conventions and protocols relating to terrorism. The CTC would welcome a report on the progress made by Peru in enacting legislation, and making other necessary arrangements, to implement those international instruments.

Peru now has a great deal of experience in combating terrorism and its legislative provisions defining terrorism as a crime are sufficiently clear and unequivocal, containing precise descriptions of the constituent elements and the purposes of terrorism in a straightforward text. As a result, a number of criminal

activities can be compared against that definition and there is no danger of confusing terrorism with other crimes such as theft, damage to property and the like.

To date, no domestic criminal law incorporating the provisions of the treaties to which Peru is a party has been implemented because there has been no occurrence in Peru of acts of the kind covered by the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the Convention for the Suppression of Unlawful Seizure of Aircraft, the Convention on Offences and Certain Other Acts Committed on Board Aircraft, the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Sheif, the Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, the Convention on the Physical Protection of Nuclear Material or the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. If such crimes were committed, they would at the present time be covered by existing legislation that is clear and unequivocal, and there would be no need to promulgate specific laws. Nevertheless, the Government is in the process of implementing such legislation with respect to an issue on which great progress has been made namely, the financing of terrorism, which is now the subject of a convention.

Even so, it is undeniable that criminal activity is on the rise, relying increasingly on technology and adopting new methods and forms, to the point that new instruments and means are being used to commit crimes with a view to achieving the desired objectives and ends. Terrorism is no exception. The terrorist acts being perpetrated throughout the world today use methods and means that have a highly destructive impact and potentially threaten human existence itself. Some terrorist organizations may even be manufacturing weapons of mass destruction (chemical, biological and nuclear, among others). The Government believes that Peru must protect itself from this global threat and promote the adoption of legal provisions to tackle such threats. For this reason, the Congress is currently analysing and discussing the above-mentioned draft consolidated text of counter-terrorism legislation, which will specify exhaustively all the obligations of the Peruvian State.

Subparagraph 3 (e):

Have the crimes set forth in the relevant international conventions and protocols been included as extraditable offences in the bilateral treaties to which Peru is party?

The relevant treaties to which Peru is a party fall into two categories:

1. Restrictive, such as Peru's treaty with the United States, where there is a list of crimes and its provisions apply only to those crimes;

2. Inclusive, such as Peru's treaty with Ecuador, which covers all kinds of crimes, provided that the following general requirements, inter alia, are met: the crime must not be political, the crime must be punishable by more than one year's imprisonment, criminal proceedings must not be time-barred.

Restrictive treaties cannot be extended to crimes not originally included in their lists, but thus far no attempts have been made to amend such treaties to adapt them to Security Council resolutions.

Inclusive treaties need no amendment since their very inclusiveness allows the crime of terrorism or related offences to be included in the corresponding requests for extradition. The only problem is the principle of dual incrimination: unless the legislation of both countries criminalizes the acts in question, the request for extradition cannot be granted.

Subparagraph 3 (f):

What legislation, procedures and mechanisms are in place for ensuring that asylum-seekers have not been involved in terrorist activities before being granted refugee status?

It should first be pointed out that the concept of asylum in the universal context of the United Nations refers to basically the concept of refuge, rather than that of asylum as envisaged in the Latin American context.

With that understanding, we should refer to Supreme Decree No. 001-85-RE (Regulation governing the legal status of political refugees and persons granted political asylum in Peru), article 21 of which, as was seen earlier, establishes that:

> "When there are serious reasons for considering that aliens, in their country of origin, last country of residence or any other country, have committed a serious non-political crime requiring international prosecution, in particular, crimes of terrorism and drug trafficking, such persons shall not be considered refugees."

The same Supreme Decree regulates the classification procedure conducted by the Ad Hoc Commission for Refugees. The Commission has the power to request whatever information it deems necessary from national agencies and may also call upon the Office of the United Nations High Commissioner for Refugees (UNHCR) for help in obtaining information required from abroad.

Furthermore, the Peruvian Congress has just adopted an asylum law (on the concepts of diplomatic and territorial asylum in Latin American practice), article 6 of which establishes that asylum may not be granted to persons charged with, tried for or convicted of non-political crimes or persons who have committed crimes against peace, crimes of terrorism, war crimes or crimes against humanity as defined in international instruments.

Subparagraph 3 (g):

Please describe the procedures and legal provisions (other than treaties) that regulate extradition.

Extradition procedure and the legal provisions regulating extradition are contained in Act No. 24710, the Extradition Act, and in Supreme Decree No. 044-93, Regulations governing Active Extradition, as amended by Supreme Decree No. 031-2001-JUS.

The active extradition file must contain authenticated copies of the following:

(a) Police statement;

(b) Public Prosecutor's report;

(c) Initiating order;

(d) Order of declaration of absence or contempt of court and the corresponding warrant of location or arrest;

(e) Indictment, committal order or sentence, depending on the stage of the proceedings;

(f) Evidence for the prosecution and for the defence;

(g) Proof of the identity of the person sought, to help determine whether he or she is indeed the person tried and sentenced;

(h) Provisions of domestic law and the treaty applicable to the case.

The President of the Supreme Court must submit this file through the Ministry of Justice to the executive branch, accompanied by the opinion of the senior government prosecutor, the ruling of the criminal division of the Supreme Court and the duly authenticated record of the proceedings in the criminal division.

The law provides that a request for active extradition must be studied by a commission composed of two representatives of the Ministry of Justice and two representatives of the Ministry of Foreign Affairs. The commission has five days in which to issue and submit its substantiated report to the Ministry of Justice.

The Ministry of Justice, pursuant to the provisions of Supreme Decree No. 044-93-JUS, as amended by Supreme Decree No. 031-2001-JUS, must present the commission's report to the Council of Ministers, which must decide whether or not to grant active extradition. The Ministry of Justice must issue the corresponding supreme resolution based on the decision of the Council of Ministers.

A request to the Peruvian State for active extradition may be revoked at any time before the person's country of refuge issues a final ruling on its merit.

Neither the Act nor the Regulations establish a time frame for the sequence of events outlined in the preceding paragraphs.

According to the provisions of Supreme Decree No. 044-93-JUS, as amended by Supreme Decree No. 031-2001-JUS, the active extradition file, together with the respective supreme resolution, must be submitted by the Ministry of Justice to the Ministry of Foreign Affairs so that the latter can submit the extradition request to the competent authority of the requested State, in accordance with international agreements and practice.

In passive extradition requests, once the local office of the International Criminal Police Organization (Interpol) has arrested the person in question, the person's statement must be taken and he or she must be brought before the relevant examining magistrate, regardless of the nature of the charge.

In cases of passive extradition, the magistrate must convene a public hearing, which must take place within two weeks, following which he must rule within three days on the admissibility or inadmissibility of passive extradition.

The magistrate must order the pre-trial release of the accused: (a) if the legal time limit established in the treaty or the law on which the extradition request is based has expired; or (b) if the person meets the procedural conditions for release pending trial.

In our country, the evidence that must be provided in extradition requests is any evidence that can be considered "proof" under Peruvian criminal law as established in the Code of Criminal Procedure.

Proof is the procedural activity, conducted through the means established by law, designed to enable the courts to determine whether the facts adduced by the parties as the basis of their accusation or defence are true or false.

Lastly, the Code of Criminal Procedure establishes as evidence the accused's statement, evidence given by witnesses, expert evidence and the findings of special investigations. In that connection, the above-mentioned Code and the Public Prosecutor's Office Organization Act consider that the police statement on which the indictment is based becomes part of the proceedings and is therefore considered from then on as evidence of the crime committed.

Is it possible under the law of Peru for requests for the extradition of alleged terrorists to be refused on political grounds?

Under the 1951 Convention relating to the Status of Refugees, the term "refugee" applies to any person who has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country.

The same criterion may also be applied to both territorial asylum and diplomatic asylum, which are granted only in cases of persecution for political reasons.

Thus, for either refuge or territorial or diplomatic asylum to be granted, there must be a well-founded fear of persecution either by the State or by other organizations such as terrorist or paramilitary groups. Likewise, it is important to stress that the essential purpose of these forms of protection is to ensure that persons in any of the situations described above, who do not enjoy the due protection of their State of nationality or residence are not left defenceless.

These are the requirements observed for the granting of the refugee status, in an attempt to follow humanitarian criteria.

Operative paragraph 4

Has Peru addressed any of the concerns expressed in paragraph 4 of the resolution?

Peru has incorporated in its legislation some provisions related to those contained in paragraph 4, such as article 279 A of the Penal Code, which stipulates: "Anyone who manufactures, develops, markets, stores, sells, acquires, uses or possesses chemical weapons, in contravention of the prohibitions set forth in the Chemical Weapons Convention adopted by the United Nations in 1992, or transfers them to another, and anyone who promotes, fosters or facilitates the commission of such acts, shall be punishable by five to 20 years' imprisonment".

Likewise, article 279 B of the Code contains the following provision on illicit arms trafficking: "Anyone who steals or seizes firearms in general or ammunition, grenades or explosives from members of the armed forces, the National Police or the security services shall be punishable by 10 to 20 years' imprisonment.

The penalty shall be life imprisonment if, as a result of the seizure or theft of the weapon or ammunition referred to in the preceding paragraph, the victim or third parties are killed or seriously wounded".

It should also be mentioned that Peru has ratified the United Nations Convention against Transnational Organized Crime and two of its additional protocols (ratification of the third is pending).

Other matters

Could Peru provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the resolution?

Please see attached organizational charts.

ORGANIZATIONAL CHART OF THE MINISTRY OF THE INTERIOR

Legislative Decree No. 370 of 4 Sept. 1986

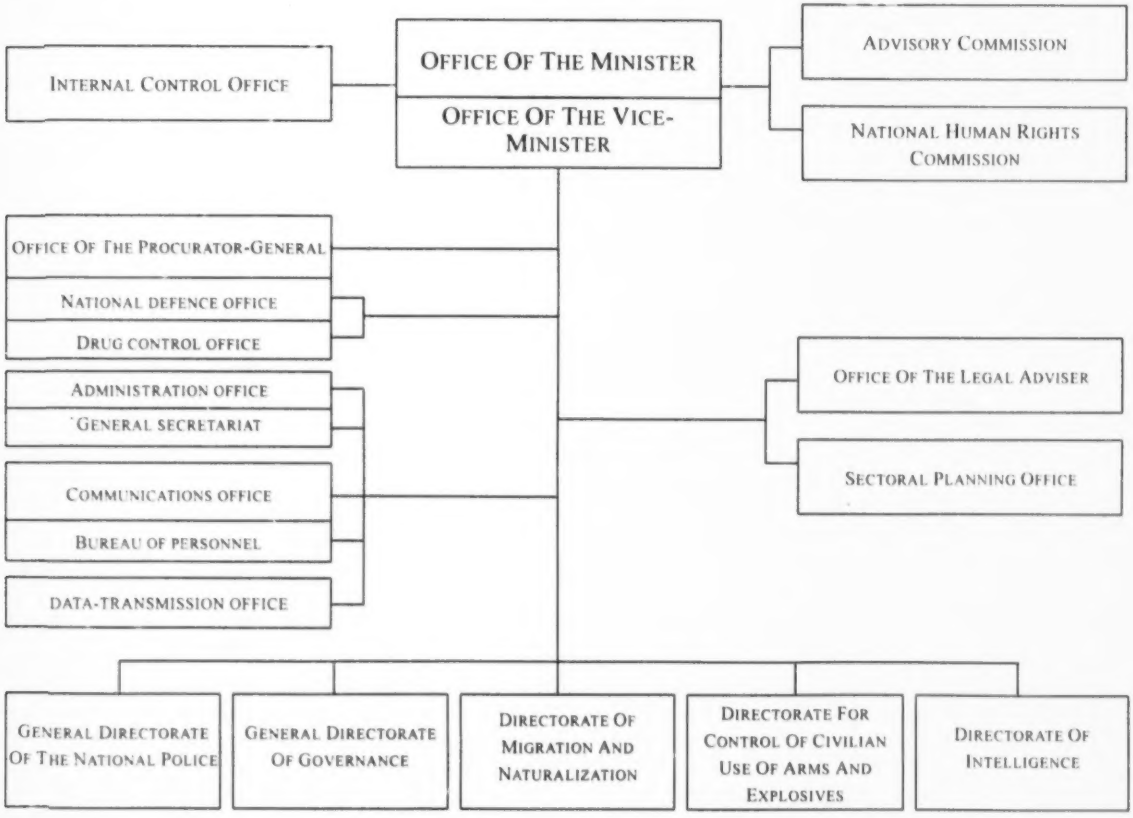
Legislative Decree No. 744 of 8 Nov. 1991

Supreme Decree No. 005-93-IN of 11 Aug. 1993

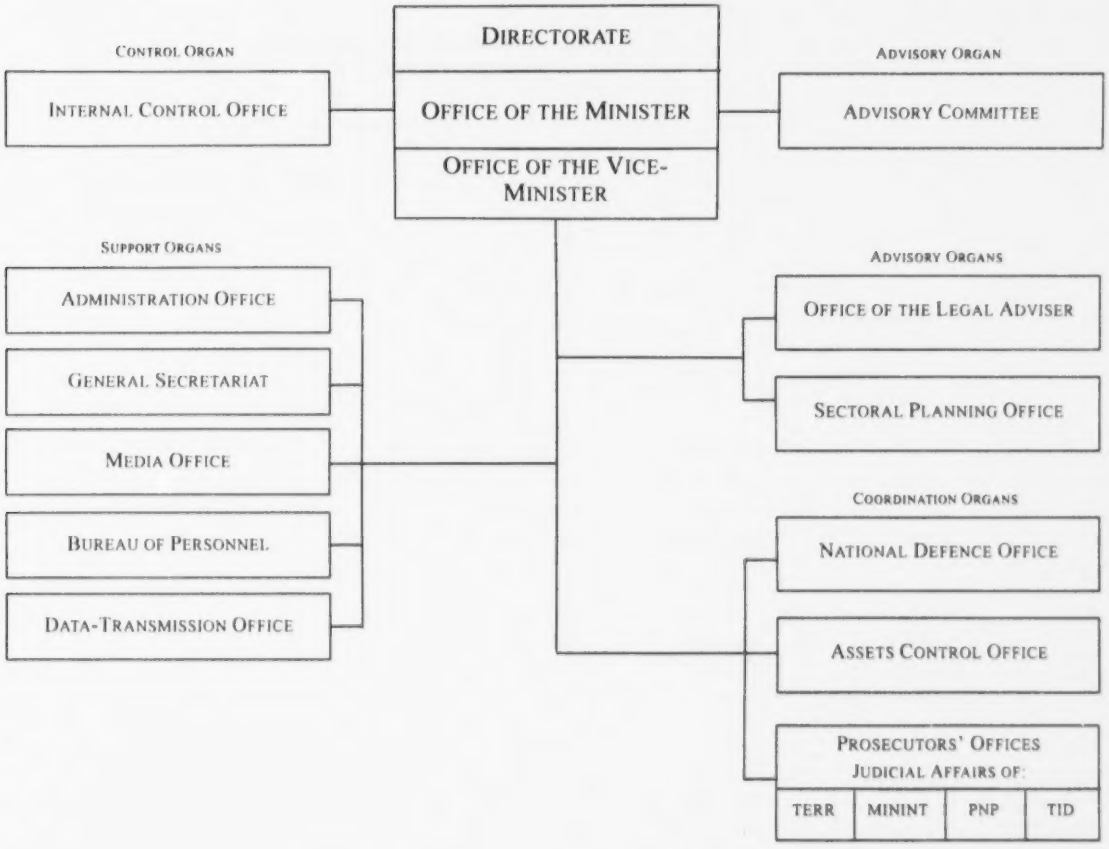
RM No. 0668-A-91-INDM of 15 Aug. 1991 and RM No. 0392-92-INDM of 16 Apr. 1992

Act No. 26473 of 9 June 1995

Act No. 27095 of 9 Apr. 1999



ORGANIZATIONAL CHART OF THE MINISTRY OF THE INTERIOR



ORGANIZATIONAL CHART OF THE NATIONAL POLICE OF PERU